

REPORT OF THE COMPENSATION COMMITTEE

It is well known that there was a Commission of Enquiry into, among other things:

- (a) “the situation in Western Kingston and related areas in May 2010 prior to the attempt to execute a provisional warrant in extradition proceedings relating to Christopher “Dudus” Coke, and the reasons and circumstances surrounding the declaration of a State of Emergency in that month”;
- (b) “the conduct of operations by the security forces of Jamaica in Tivoli Gardens and related areas during the said State of Emergency in the month of May 2010”;
- (c) “the circumstances under which, and by whom, private property was damaged or destroyed during or around the period of the State of Emergency declared in My 2010”; and
- (d) “whether monies, benefits or compensation were provided by the State to compensate residents of Western Kingston including Tivoli Gardens and, if so, how much was actually paid or distributed, the manner and recording of such payment or distribution, and the adequacy of such compensation”.

In its findings, the Commission of Enquiry blamed members of the security forces for much of the damage done to property and for several deaths and cases of personal injury. The Commission found that the Ministry of Labour and Social Security paid sums of money to many residents who claimed they had been adversely affected by the events. However, the amounts may have been inadequate. Consequently, the Commission recommended the establishment of a Compensation Committee to “investigate and determine claims for compensation for loss and damage to property and business”. The Commission was mindful of the “substantial body of relevant and useful documentation relating to loss and damage of property” already existing in the possession of the Ministry of Labour and Social Security and the Office of the Public Defender and consequently did not envisage the exercise being a protracted one.

It was against this background that the Compensation Committee was established and had its first meeting on November 1, 2016. The terms of reference charged the Committee with the responsibility of investigating and determining claims in respect of proven extra-judicial killings, personal injury and property damage and loss. The Committee was required to meet three days in each week for 9 months,

to carry out its task. Among the persons present at the first meeting were the Public Defender and the Deputy Public Defender, the Solicitor-General, an Assistant Attorney-General, the Administrator-General, the President of the Jamaican Bar Association, the Attorneys –at-law assign to the Committee, members of the media, and a few residents of Western Kingston. At its first meeting, the Committee was informed that there were over 150 claims in the possession of the Office of the Public Defender, and it was anticipated that the total number of claims would be over 300. With this in mind, the Committee announced that claimants would be allowed a further month within which to file their claims with the Office of the Public Defender, if they did not have an attorney-at-law to do so. The Ministry of Justice prepared and distributed fliers in the affected communities setting out the time frame for filing claims and the method of filing. This information was also carried by the media houses.

As is customary in many areas of life in Jamaica, where rules are disregarded, so it was that there were persons who felt that they should not abide by the rules set by the Compensation Committee. They did so at their peril as the Committee did not find it possible to support indiscipline.

The deadline for the receipt of claims by the Committee was December 2, 2016. By that time, a total of 588 claims had been received by the Committee. At the request of the Office of the Public Defender, the deadline was extended to December 5, 2016. By then, the total number of claims submitted through the Office of the Public Defender had soared to 738. To this number were added 3 from the Office of the Children’s Advocate, 14 from attorneys-at-law and 28 from the Administrator-General. **The grand total before the Compensation Committee as of December 5, 2016 was 783.**

The Committee is pleased to state that it considered all 783 claims and has made a recommendation in respect of each. However, the Committee is aware that the Office of the Public Defender has more than 400 claims that have not been fully investigated due to time and staff constraints, as well as the fact that criminal violence continues in the area from time to time hindering the activities of investigators.

The terms of reference required the Compensation Committee to conduct its deliberations in confidence. We interpreted that to mean that it was a matter

between the relevant parties, namely the claimants and the State. Consequently, the Attorney-General's Chambers was given copies of all claims and invited to make submissions. Where claimants gave evidence before the Committee, the representatives from the Attorney-General's Chambers were present and allowed to participate in the proceedings. The requirement for confidentiality meant that the deliberations could not be done in the public glare. In the process, the Committee found that claimants spoke freely and frankly of the hurt, fear and terror they experienced during the incursion. There were some claimants who also spoke of open gunmanship on the part of some members of the civilian population.

The Committee wishes to record its appreciation for the assistance received from the two Attorneys assigned to the Committee (Miss Carlene Larmond and Mr. Harrington McDermott), the Office of the Public Defender, the Ministry of Labour and Social Security, the Attorney-General's Chambers, the Administrator-General, the several attorneys-at-law who represented some of the claimants, and the staff of the Ministry of Justice. The Office of the Public Defender and the Chambers of the Attorney-General were represented at all the hearings of the Committee, and their representatives participated fully in the proceedings.

The records indicate that 97 persons gave evidence before the Committee; 55 persons who were invited to appear failed to show, and 2 claimants died before the Committee was established.

It will be seen from the commentary in respect of each claim that the Office of the Public Defender and the Ministry of Labour and Social Security played significant roles in the determination of the merits of the claims. Both entities were involved with most of the claimants from the outset. There were photographs, statements and documentary proof in respect of property damage complained of. The Office of the Public Defender was on the scene very early and has remained in contact with the community since the incursion. This Office has provided the main link between the claimants and the Committee. The Ministry of Labour and Social Security has also been involved in the process from an early stage as its officers did preliminary investigations and made payments to persons who they were satisfied had been adversely affected by the incursion.

Where a claimant was shown to have received a grant of money from the Ministry of Labour and Social Security, the Compensation Committee regarded that as evidence that there was some loss or damage seen by the Ministry's agents. The Committee did not necessarily take that to mean that the State was liable for the loss or damage. In that situation, we examined the circumstances by interviewing the claimants on oath to see whether there was liability on the part of the State.

The report of the Commission of Enquiry formed the base for the assessment of compensation, and the Committee accepted its findings as to liability without question. Where the Commission of Enquiry found that there was no liability on the part of the State, the Committee – not having seen or heard the witnesses – regarded itself as bound by the findings of the Commissioners.

The evidence received and examined by the Compensation Committee presented for the most part a picture of damage done to property in an irrational and, for the most part, indiscriminate manner. The Committee is of the view that there must be a better way to search for ammunition and weapons. There appears to have been scant regard for life and property.

As regards the claims in respect of deaths and personal injury, the recommendations for compensation are in keeping with what a court in Jamaica would have awarded. As regards proven property damage or loss, the Committee made recommendations on the basis of the estimates done and provided by the claimants at the time or shortly thereafter. Where in the narrative a claimant's age is given, it is the age at the time of the statement to the Public Defender.

On September 19, 2017, the Compensation Committee delivered to the Permanent Secretary, Ministry of Justice its recommendations for payments to be made to successful claimants for personal injury and property damage or loss, and to the estates of persons who the Commission of Enquiry found to have been extra-judicially killed. The Compensation Committee now presents the narrative in respect of all claims submitted, whether recommended or rejected.

HON. MR. JUSTICE SEYMOUR PANTON (RT'D), OJ, CD

REVEREND RENNARD WHITE, JP

REVEREND HERRO BLAIR